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In the United States Bankruptcy Court  
for the  
Southern District of Georgia  
Savannah Division

In the matter of:	)	
	)	Chapter 7 Case
SHAWNDA D. BYRD	)	
	)	Number <u>96-41781</u>
<i>Debtor</i>	)	

ORDER ON DEBTOR'S MOTION TO CONDUCT 341 MEETING  
BY TELEPHONIC MEANS

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The above matter was considered at a hearing on October 15, 1997, and an objection was interposed by the United States Trustee. The Debtor seeks a telephonic Section 341 hearing because as a member of the United States Army she is currently stationed in Japan. Quite reasonably, Debtor asserts that it would be both expensive and extremely difficult to return for a creditors' meeting in this District. As a result, she believes it would constitute a hardship to require her to appear and further, that this Court has the discretion under 11 U.S.C. § 105(a) to permit a telephonic examination. The United States Trustee objects, contending that the provisions of 11 U.S.C. §§ 341 and 343 require a personal appearance by the Debtor.

While it is true that the Code requires that a Debtor "shall appear and

submit to examination under oath at the meeting of creditors,” 11 U.S.C. § 343, I agree with the Debtor that in extraordinary cases it is possible to appear by means other than in person. It is not desirable to routinely grant such a request, however, because the best and most time-honored way to assess the credibility and demeanor of a witness is by a personal appearance. If requests such as this are routinely granted, many debtors who might find it merely inconvenient to appear personally would seek similar consideration. The potential for abuse in the routine granting of requests like this is immense. I do agree with the Debtor, however, that the Court has discretion in extraordinary cases to tailor the requirements for attendance at a 341 meeting in a manner consistent with the ability of a debtor to attend.

With respect to the 341 examination, the Debtor “shall attend and submit to an examination at the times *ordered by the Court.*” FED. R. BANKR. P. 4002 (emphasis supplied). Moreover, “the examination of . . . the debtor under § 343” is governed by Rule 2004, which provides that “the court may for cause shown and *on terms as it may impose* order the debtor to be examined under this rule at any time or place it designates, *whether within or without the district* wherein the case is pending.” FED. R. BANKR. P. 2004(b), (d) (emphasis supplied). I will grant the request to allow the examination to be conducted without requiring the Debtor to return to the Southern District of Georgia, in light of her assignment to Japan as a member of the United States military. I find that Debtor has shown good cause, first, because the expense of returning for this type of proceeding would

be completely out of proportion to the need for her to appear in person and second, because her ability to do so, given the requirements of military service, is by no means a certainty.

On the other hand, an informal telephonic conference provides no guarantee or safeguard as to the identity of the person on the telephone or the truthfulness of their testimony, if not given under oath or subject to the penalties which can be imposed for providing false information. I therefore conclude that the examination must be conducted with the same protections as those provided for taking foreign depositions under Bankruptcy Rules 7028 and 7030.<sup>1</sup> Relying upon the guidance of the procedural safeguards outlines therein, the Motion is granted on the following terms and conditions.

A court reporter, or person otherwise authorized to administer oaths and record testimony in proceedings involving United States military personnel stationed in Japan, must be present; furthermore, a member of the J.A.G. Corps of the United States Army must also be present to verify on the record the identity of the person presenting herself as the Debtor. Debtor's counsel is hereby required to serve on every party to the 341 meeting reasonable notice in writing, stating the time and place for the telephonic conference, and shall arrange in advance for the attendance of a J.A.G. officer and for the

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<sup>1</sup> Part VII of the Bankruptcy Rules applies only to adversary proceedings. FED. R. BANKR. P. 7001. This Court adopts the approach of these rules, however, under its broad powers delineated in Section 105 to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

presence of the court reporter. The expense of conducting the examination in this fashion must be borne by the Debtor.

The telephonic examination shall begin with a statement on the record by the J.A.G. officer which includes the officer's name and address; the date, time, and place of the examination; the name of the Debtor; the identification of the Debtor and all persons present, and the administration of the oath or affirmation to the Debtor. The Debtor is ORDERED to have in her possession a complete copy of her petition and scheduled filed in this case. The Trustee and any other party in interest will then be permitted to question the Debtor in the customary manner for the conduct of 341 meetings in this District. The court reporter shall certify that the Debtor was duly sworn and that the transcript is a true record of the examination of the Debtor. This certificate shall be in writing and shall accompany the transcript of the examination, which shall be promptly filed with the Clerk's Office of the Bankruptcy Court of the Southern District of Georgia. In all other respects, the examination is to be conducted in the same manner as if it were conducted in Savannah, and a record of the meeting is to be preserved by the United States Trustee, in compliance with Bankruptcy Rules 2003 and 2004.

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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This \_\_\_\_ day of December, 1997.